

In re: BURNETT LEE GUNN, Debtor.

SONEET R. KAPILA, TRUSTEE,

Plaintiff,

v.

BURNETT LEE GUNN, PHILLIP J. HATT and INDYMAC BANK, FSB,

Defendants.

Case No.: 04-23331-BKC-RBR

Adversary Proceeding No.: 04-2225-BKC-RBR-A

The Trustee objects to the correction of the missing witness signature on a deed post petition and seeks to set aside the conveyance from Debtor to Hatt and invalidate the mortgage held by IndyMac Bank. On its face, the deed to Hatt is missing the signature of one witness. Hatt has submitted unrefuted evidence that there was more than one witness to the execution of the deed, but through inadvertent error, the deed was signed by only one witness prior to recording. The witnesses to the execution of the deed are willing to subscribe their names if the Court so allows. The Court concluded that the Trustee was on inquiry or actual implied notice of Hatt's claim to the property and is not entitled to BFP or creditor status free of Hatt's interest in the property. Additionally, the ineffective deed coupled with the grantees' use of the property was sufficient to put the Trustee on notice and defeat his hypothetical lien holder status.